

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

)	
UNITED STATES OF AMERICA and)	
STATE OF WEST VIRGINIA)	
)	
Plaintiffs,)	
)	
)	Civil Action No
v.)	
)	Judge
)	
E. I. DU PONT DE NEMOURS AND COMPANY,)	
)	
Defendant.)	
)	

CONSENT DECREE

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WHEREAS, Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), has filed a Complaint in this action alleging that E. I. du Pont de Nemours and Company (“DuPont”) violated Section 112 of the Clean Air Act, 42 U.S.C. § 7412, and the implementing regulations at 40 C.F.R. Part 63, Subparts H, UU, YY, and FFFF.

WHEREAS, Plaintiff State of West Virginia, having joined the United States in the Complaint filed in this action, and alleging that DuPont has violated certain terms of its Clean Air Act Title V permit and the emission standards for hazardous air pollutants as promulgated in the West Virginia Code of State Rules, Title 45, Section 34 .

WHEREAS, DuPont owns and operates a manufacturing and research facility (the “Facility”), known by DuPont as the “Washington Works Facility,” located in Washington, West Virginia.

WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation among the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I of this Consent Decree, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b), and over the Parties. Venue lies in this District pursuant to Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because DuPont resides and is located in this judicial district and the violations alleged in the Complaint are alleged to have occurred in this judicial district. For purposes of this Decree, or any action to enforce this Decree, DuPont consents to the Court's jurisdiction over this Decree and any such action and over DuPont and consents to venue in this judicial district.

2. For purposes of this Consent Decree, DuPont agrees that the Complaint states claims upon which relief may be granted pursuant to Section 113 of the Clean Air Act, 42 U.S.C. § 7413.

II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States, the State of West Virginia, and upon DuPont and any successors, assigns, or other entities or persons otherwise bound by law.

4. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph 4 or otherwise, shall relieve DuPont of its obligation to implement the terms of this Decree. At least thirty (30) Days prior to such transfer, DuPont shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with all portions of the proposed written agreement between DuPont and the prospective transferee related to environmental

compliance, to EPA, the United States Attorney for the Southern District of West Virginia, and the United States Department of Justice, in accordance with Section XIII of this Decree (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Decree.

5. DuPont shall provide a copy of this Consent Decree to all officers, employees, contractors, and agents whose duties include the implementation of any compliance requirements of this Consent Decree. The foregoing requirement may be satisfied by hard copy, electronic copy, or by providing on-line access with notice to the affected personnel. DuPont shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

6. In any action to enforce this Consent Decree, DuPont shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

7. Terms used in this Consent Decree, including the Attachments hereto, that are defined in the Clean Air Act or in regulations promulgated pursuant to the Clean Air Act shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- a. “Annual” or “Annually” shall mean a calendar year.
- b. “Annual ELP Audit” shall mean any audit required by Paragraph 23 and Attachment B of this Consent Decree.

c. “Annual ELP Audit Report” shall mean the report required by Paragraph 41 of this Consent Decree.

d. “Average” shall mean the arithmetic mean.

e. “Certified Low-Leaking Valves” shall mean valves for which a manufacturer has issued on a date no earlier than four (4) years prior to the Effective Date, either: (i) a written guarantee that the valve will not leak above 100 parts per million (ppm) for five years; or (ii) a written guarantee, warranty, certification, or equivalent documentation that the valve has been tested pursuant to generally-accepted good engineering practices and has been found not to be leaking at a concentration equal to or greater than 100 ppm.

f. “Certified Low-Leaking Valve Packing Material” shall mean valve packing material for which a manufacturer has issued on a date no earlier than four (4) years prior to the Effective Date, either: (i) a written guarantee that the valve packing material will not leak above 100 ppm for five years; or (ii) a written guarantee, certification or equivalent documentation that the valve packing material has been tested pursuant to generally-accepted good engineering practices and has been found not to be leaking at a concentration equal to or greater than 100 ppm.

g. “Complaint” shall mean the complaint filed by the United States in this action.

h. This item intentionally omitted.

i. “Consent Decree” or “Decree” shall mean this Decree and Attachments A and B hereto.

j. “Covered ELP Equipment” shall mean all valves, connectors, pumps,

agitators, and Open-Ended Lines (“OELs”) in light liquid, or gas/vapor, or heavy liquid service that are regulated under any LDAR Requirement.

k. “Covered LDAR Equipment” shall mean all valves, connectors, pumps, agitators, pressure relief devices and Open-Ended Lines (“OELs”) in light liquid, or gas/vapor, or heavy liquid service that are regulated under any LDAR Requirement.

l. “Covered Type and Service of Equipment” shall mean each type of equipment (e.g. valve, pump, connector, OEL, agitator, or pressure relief device), organized by the service such equipment is in: Hazardous Air Pollutant (“HAP”) light liquid, HAP gas/vapor , HAP heavy liquid, Volatile Organic Compound (“VOC”) light liquid, VOC gas/vapor or VOC heavy liquid service. For all purposes under this Consent Decree, to the extent authorized by the applicable LDAR Requirement, connectors in gas/vapor or light liquid service may be managed as connectors in heavy liquid service.

m. “Covered Process Area” or “Covered Process Unit” shall mean any process area or unit at the Facility which is subject to any LDAR Requirement.

n. “Day” shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day. For purposes of complying with any related applicable and enforceable LDAR Requirement, “day” shall have the meaning provided in such LDAR Requirement.

o. “DOR” shall mean Delay of Repair.

p. “DuPont” shall mean E .I. du Pont de Nemours and Company.

q. “Enhanced LDAR Program” or “ELP” shall mean the program required by Section V.C of this Consent Decree and Attachment B hereto.

r. “EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies.

s. “Effective Date” shall have the definition provided in Section XIV of this Consent Decree.

t. “Facility” shall mean DuPont’s Washington Works Facility located in Washington, West Virginia.

u. “First Process Unit Shutdown” shall mean for each Covered Process Unit, the first Process Unit Shutdown that occurs for that Unit six (6) Months or more after the Effective Date.

v. “Inaccessible Agitator” shall mean an agitator that meets the criteria set forth in 40 C.F.R. §§ 63.1028 (e)(6) or 63.173(i).

w. “Inaccessible Connector” shall mean a connector that is inaccessible as provided in 40 C.F.R. §§ 63.1027(e)(2)(i), 63.174(h), or 60.482-11a(f)(1).

x. “LDAR” or “Leak Detection and Repair” shall mean the leak detection and repair activities required by any LDAR Requirement.

y. “LDAR Applicability Audit” shall mean the audit required by Section V.B of this Consent Decree, as more fully described in Attachment A hereto.

z. “LDAR Manual” shall mean the manual required by Paragraph 18 of this Consent Decree, as more fully described in Attachment A hereto.

aa. “LDAR Personnel” shall mean all DuPont contractors and employees responsible for performing, pursuant to an LDAR Requirement, monitoring data input, maintenance of LDAR monitoring devices, leak repairs on LDAR Equipment, replacement of LDAR Equipment, recordkeeping or reporting, and/or any other duties generated as a result of this Consent Decree.

bb. “LDAR Requirement” shall mean any equipment leak provision imposed under any specific subpart of 40 C.F.R. Part 60, 61, or 63 which is applicable to the Facility.

cc. “LDAR Training Program” shall mean the training program required to be prepared in accordance with the requirements of Paragraph 24 of this Consent Decree.

dd. “Method 21” shall mean the test method found at 40 C.F.R. Part 60, Appendix A, Method 21. To the extent that the Covered LDAR Equipment is subject to regulations that modify Method 21, those modifications shall be applicable.

ee. “Month” or “monthly” shall mean calendar month.

ff. “OEL” or “Open-Ended Line” shall mean any valve, except pressure relief valves, having one side of the valve seat in contact with process fluid and one side open to atmosphere, either directly or through open piping.

gg. “OELCD” shall mean an open ended valve or line at the closure device.

hh. “Parties” shall mean the United States, the State of West Virginia, and DuPont.

ii. “Process Diagram” shall mean a diagram of a Covered Process Unit, or portion thereof, that depicts, at a minimum, each distinct piping run containing a group of Inaccessible Connectors and/or one or more Inaccessible Agitator(s). Such Process Diagram

shall show the unique identification number for, and location of, the first identified Covered LDAR Equipment component at each end of each distinct piping run containing Inaccessible Connectors and/or Inaccessible Agitator(s). The unique identification number shall be that assigned pursuant to Paragraph D of Attachment A to this Consent Decree. Such diagram shall also identify the Covered Process Unit and the date the diagram was prepared, and shall include sufficient information to determine the purpose of the diagram. Such diagram may depict Covered LDAR Equipment in addition to Inaccessible Connectors and/or Inaccessible Agitators. Such diagram may be an existing diagram or a diagram prepared specifically for the purpose of complying with this Consent Decree or the applicable LDAR Requirements.

jj. “Process Unit Shutdown” shall mean a shutdown of a Covered Process Unit that is done for the purpose of scheduled maintenance or lasts longer than 14 Days.

kk. “Quarter” or “Quarterly” shall mean a calendar quarter (January through March, April through June, July through September and October through December).

ll. “Quarterly QA/QC ELP Review” shall mean the review and any response actions required pursuant to Section V, Paragraphs 13, 14, and 15 of this Consent Decree.

mm. “Repair Verification Monitoring” shall mean the utilization of monitoring in accordance with Method 21 (or other monitoring method that indicates the relative size of the leak and is conducted in accordance with applicable LDAR Requirement(s)) which relates to the repair of the component as part of each attempt at repair of a leaking piece of Covered ELP Equipment to determine whether the leak is below the applicable leak definition in the ELP or in the applicable LDAR Requirement. Each attempt at repair shall not be considered completed until repair verification monitoring has been performed.

nn. “Screening Value” shall mean the highest emission level that is recorded at each piece of Covered ELP Equipment as it is monitored for the relevant monitoring event in compliance with Method 21.

oo. “Semi-Annual Consent Decree progress Report” or “Semi-Annual Report” shall mean any report required pursuant to Section VI.A of this Consent Decree.

pp. “State” shall mean the State of West Virginia.

qq. “United States” shall mean the United States of America, acting on behalf of EPA.

rr. “Week” or “Weekly” shall mean the standard calendar period.

IV. CIVIL PENALTY

8. Within thirty (30) Days after the Effective Date of this Consent Decree, DuPont shall pay the sum of \$800,000 as a civil penalty. If any portion of the civil penalty due to the United States or the State is not paid when due, DuPont shall pay interest on the amount past due accruing from the Effective Date through the date of payment at the rate specified in 28 U.S.C. § 1961. Interest payment under this Paragraph shall be in addition to any stipulated penalty due under Section VII (Stipulated Penalties) of this Consent Decree.

9. **Payments to the United States and the State of West Virginia**

a. DuPont shall pay one half of the civil penalty in the amount of \$400,000 and any associated interest required by Paragraph 8 of this Consent Decree by *FedWire* Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with written instructions to be provided to DuPont, following entry of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney’s Office for the Southern District of West Virginia. At the

time of payment, DuPont shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *U.S. v. E.I. DuPont de Nemours & Company*, and shall reference the civil action number and DOJ case number 90-5-2-1-09610, to the United States in accordance with Section XIII of this Consent Decree (Notices); by email to acctsreceivable.CINWD@epa.gov; and by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

b. DuPont shall pay one half of the civil penalty in the amount of \$400,000 and any associated interest to the State of West Virginia by certified check made payable to the Air Pollution Education and Environment Fund and mailed to:

West Virginia Division of Air Quality
Attention: John A. Benedict, Director
601 57th Street, SE
Charleston, WV 25304

10. DuPont shall not deduct any penalties paid under this Decree pursuant to this Section or Section VII (Stipulated Penalties) in calculating its federal or state income tax.

V. COMPLIANCE REQUIREMENTS

11. The requirements of this Section V of this Consent Decree shall apply to each Covered Process Unit at the Facility. The requirements of this Consent Decree are in addition to, and not in lieu of, any LDAR Requirement that may be applicable to Covered LDAR Equipment. If there is a conflict between an LDAR Requirement and this Consent Decree, DuPont shall comply with the more stringent of the requirements.

A. LDAR QA/QC

12. LDAR Daily Certification. Beginning no later than thirty (30) Days after the Effective Date, on each Day that LDAR monitoring occurs, at the end of such monitoring, DuPont shall ensure that each LDAR monitoring technician certifies that the data collected and electronically stored or transcribed in writing accurately represent the monitoring and calibration of equipment performed for that Day by requiring the monitoring technician to sign a form that includes the following certification:

On _____[insert date], I reviewed the LDAR monitoring and calibration data that I collected or transcribed today and to the best of my knowledge and belief, the data accurately represent the monitoring and calibration of equipment that I performed today. I understand that such data may be reviewed in order to determine compliance with a federally enforceable consent decree.

13. Quarterly QA/QC ELP Review Performance and Timing. For each Covered Process Unit, DuPont shall perform a Quarterly QA/QC ELP Review in accordance with the requirements of this Paragraph 13. Such review shall be performed by any of the following persons (“the Quarterly ELP Reviewer”): (a) an LDAR-trained Facility employee who does not serve on a routine basis as an LDAR monitoring technician at the Facility; (b) an LDAR-trained employee assigned to another DuPont facility or assigned to centralized DuPont (and/or subsidiary) functions who does not primarily serve the Facility; or (c) a qualified third-party LDAR contractor who does not routinely serve as an LDAR monitoring technician at the Facility. Such reviews shall be performed once per Quarter. Each such Quarterly QA/QC ELP Review shall evaluate the information identified in Paragraph 14 of this Consent Decree for the Quarter ending prior to the performance of such review. The first Quarterly QA/QC ELP Review shall evaluate the information for the first full Quarter commencing at least three (3)

Months after commencement of implementation of the ELP required by Section V.C of this Consent Decree.

14. Quarterly QA/QC ELP Review Requirements. For each Covered Process Unit, the Quarterly ELP Reviewer shall perform the following tasks:

- a. verify that required monitoring of Covered ELP Equipment was performed at the appropriate frequency;
- b. verify that all relevant documentation has been maintained and sign-offs have been recorded for any Covered ELP Equipment placed on a DOR list, and that each repaired component that was previously listed on a DOR list has been removed from such list;
- c. verify that any required repairs of Covered ELP Equipment have been performed within the required time periods, or that such leaking component has been placed on a DOR list or that such leaking component has been removed from LDAR service;
- d. verify that records demonstrating compliance with requirements, which are set forth in Method 21, for monitoring instrument calibration, response factors, and performance evaluations have been maintained as required pursuant to this Consent Decree and applicable LDAR Requirements;
- e. verify that monitoring data were recorded and electronically transcribed pursuant to Subsection I.E. of Attachment B to this Consent Decree (LDAR Monitoring Data Storage and Retention Requirements), and LDAR Daily certifications required by Paragraph 12, above, were completed and maintained, and;

f. review monitoring data and number of pieces of Covered ELP Equipment monitored per Day for feasibility and unusual trends.

15. Corrective Action and Records of QA/QC ELP Reviews. DuPont shall promptly address any non-compliance identified or observed during such Quarterly QA/QC ELP Review. DuPont shall maintain a log that records the date and time that the reviews, verifications, and observations required by Paragraphs 13, 14, and 15 of this Consent Decree are undertaken and describes the nature and timing of any corrective actions planned or completed. Upon request by EPA or the State, DuPont shall provide the log for any Quarterly QA/QC ELP Review(s).

B. LDAR Applicability Audit and LDAR Manual

16. LDAR Applicability Audit Commencement. No later than thirty (30) Days after the Effective Date, DuPont shall commence the LDAR Applicability Audit required by Attachment A hereto. DuPont shall commission a third-party LDAR contractor to perform such LDAR Applicability Audit in coordination with DuPont personnel.

17. LDAR Applicability Audit Completion. DuPont shall ensure the completion of the LDAR Applicability Audit in accordance with the requirements of Attachment A, hereto, no later than nine (9) Months after the Effective Date.

18. LDAR Manual and Lists of Covered LDAR Equipment. DuPont shall commission a third-party LDAR contractor to prepare, in coordination with DuPont personnel, a written LDAR Manual in accordance with the requirements of Attachment A, hereto. DuPont shall complete the LDAR Manual required by Attachment A, Paragraph C, and the lists of Covered LDAR Equipment required by Attachment A, Paragraph E, no later than nine (9)

Months after the Effective Date. DuPont shall annually review and update the Manual and the lists as required by Paragraph G of Attachment A hereto.

19. Submission of LDAR Manual and Lists of Covered LDAR Equipment and Certification of Completion of LDAR Applicability Audit. No later than nine (9) Months after the Effective Date, DuPont shall submit to EPA for approval the LDAR Manual. At the same time, DuPont shall also submit a certification that, to the signer's best knowledge and belief formed after reasonable inquiry, DuPont has completed the LDAR Applicability Audit required by Attachment A hereto. The certification required by this Paragraph is in addition to the certification required by Paragraph 42 of this Consent Decree. No later than nine (9) Months after the Effective Date, DuPont shall submit to EPA the lists required by Paragraph 18 and Attachment A, Paragraph C, of this Consent Decree.

C. Enhanced LDAR Program (ELP)

20. For each Covered Process Unit, DuPont shall comply with the requirements set forth in Attachment B hereto (Enhanced LDAR Program and Annual ELP Audit Requirements).

21. ELP Commencement. No later than nine (9) Months after the Effective Date, DuPont shall commence implementation of the requirements set forth in Attachment B hereto and shall thereafter ensure continuous compliance with each requirement set forth in Attachment B hereto.

22. ELP Monitoring Frequency and Equipment Requirements. No later than nine (9) Months after the Effective Date, DuPont shall comply with the ELP Monitoring Frequency and Equipment Requirements of Section I of Attachment B hereto.

23. Annual ELP Audit. DuPont shall perform Annual ELP Audits in accordance with the requirements of Attachment B to this Consent Decree.

D. LDAR Training Program Requirements

24. By no later than nine (9) Months after the Effective Date, DuPont shall ensure completion of an LDAR Training Program for each Covered Process Area for all LDAR Personnel. DuPont shall commission a third-party LDAR contractor to provide support in identifying the content of the LDAR Training Program. For each Covered Process Unit, such LDAR Training Program shall include, but need not be limited to, in written or a combination of written, auditory, and visual format, the following:

- a. A summary of LDAR Requirements applicable to the Covered Process Unit;
- b. A description of the types of Covered ELP Equipment which are subject to LDAR monitoring;
- c. Instruction on proper LDAR monitoring technique and calibration of monitoring equipment in accordance with Method 21 and any other applicable LDAR Requirement;
- d. Instruction on monitoring frequency for each type of Covered ELP Equipment pursuant to applicable LDAR Requirements and to the ELP requirements of Attachment B hereto;
- e. Instruction on LDAR repair requirements for each type of Covered ELP Equipment pursuant to applicable LDAR Requirements;
- f. Instruction on recordkeeping and reporting requirements pursuant to applicable LDAR Requirements;

g. Instruction on stipulated penalties pursuant to this Consent Decree, and statutory penalties for noncompliance with this Consent Decree or with applicable LDAR Requirements for monitoring, recordkeeping, and reporting; and

h. Instruction on all requirements of Section V (Compliance Requirements), Section VI (Reporting Requirements), and Attachments A and B of this Consent Decree.

25. Upon request by EPA or the State, DuPont shall submit the written LDAR Training Program materials for any Covered Process Unit identified by EPA or the State. DuPont shall also make the LDAR Training Program materials available to EPA and the State for inspection upon request.

26. Initial LDAR Training. No later than nine (9) Months after the Effective Date, DuPont shall ensure that all LDAR Personnel have completed training in accordance with the LDAR Training Program. Such training shall be conducted either by a qualified third-party LDAR contractor or by DuPont personnel who have received training from a qualified third-party LDAR contractor which includes training covering the information contained in the LDAR Training Program.

27. LDAR Training Prior to LDAR Duty Assignments. Beginning no later than nine (9) Months after the Effective Date and continuing until termination of this Consent Decree, prior to any duty assignments relating to any aspect of compliance with LDAR Requirements, including LDAR monitoring, LDAR repair, LDAR recordkeeping, or other LDAR duties, all newly assigned LDAR Personnel must complete the LDAR Training Program required by this Consent Decree before undertaking any LDAR duty assignment.

28. Annual Review of Training Program. DuPont shall review the LDAR Training Program for each Covered Process Unit, including any related written materials, by no later than 30 Days after submission of the first Annual ELP Audit Report and at least once every twelve (12) Months thereafter to ensure that each such program reflects any changes to such Covered Process Unit that occurred during the previous twelve (12) Months, including any changes to the relevant portions of the LDAR Manual.

29. Annual Refresher LDAR Training. DuPont shall ensure that all LDAR Personnel complete their first annual refresher training by no later than twenty-one (21) Months after the Effective Date, and once every twelve (12) months thereafter. Such refresher training shall be performed in accordance with the LDAR Training Program developed pursuant to this Consent Decree. Such annual training shall be conducted either by a qualified third-party LDAR contractor or by DuPont personnel who have received training by a qualified third-party LDAR contractor which includes training covering the information contained in the LDAR Training Program and the LDAR Manual.

30. Records of LDAR Training. DuPont shall maintain the following records of the training of LDAR Personnel pursuant to the LDAR Training Program:

- a. the job descriptions of LDAR Personnel trained;
- b. description of the LDAR training provided to each person;
- c. the date and name(s) of each LDAR personnel who completed such training; and
- d. the name of the provider(s) of the LDAR training.

E. Approval of Deliverables

31. After review of any plan, report, or other item that is required to be submitted for approval pursuant to this Consent Decree, EPA shall in writing, after consultation with the State as EPA deems appropriate: a) approve the submission; b) approve the submission upon specified conditions; c) approve part of the submission and disapprove the remainder; or d) disapprove the submission.

32. If the submission is approved pursuant to Paragraph 31, DuPont shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part, pursuant to Paragraph 31, DuPont shall, upon written direction from EPA, take all actions required by the approved plan, report, or other item that EPA determines are technically severable from any disapproved portions, subject to DuPont's right to dispute only the specified conditions or the disapproved portions, under Section IX of this Decree (Dispute Resolution).

33. If the submission is disapproved in whole or in part pursuant to Paragraph 31, above, DuPont shall, within forty-five (45) Days of receiving notice of such disapproval, or such other time as the Parties agree to in writing, address all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, DuPont shall proceed in accordance with the preceding Paragraph.

34. Any stipulated penalties applicable to the original submission, as provided in Section VII (Stipulated Penalties) of this Decree, shall accrue during the 45-Day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of DuPont's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

35. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA may again require DuPont to correct any deficiencies, in accordance with the preceding Paragraphs, or EPA may correct any deficiencies and return the submission to DuPont, subject to DuPont's right to invoke Dispute Resolution and the right of EPA to seek stipulated penalties as provided in the preceding Paragraphs.

F. Permits

36. Where any compliance requirement under this Section V (Compliance Requirements) requires DuPont to obtain a federal, state, or local permit or approval, DuPont shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. DuPont may seek relief under the provisions of Section VIII of this Consent Decree (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if DuPont has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

37. Incorporation of Requirements into Title V Permit. In accordance with applicable federal and state regulatory procedures, DuPont shall submit an application for modification of

each relevant Part of the Title V Permit for each Covered Process Unit at the Facility to require DuPont to maintain each LDAR Manual required by Paragraph C of Attachment A hereto, and to update annually, as necessary, the elements of the LDAR Manual listed below in this Paragraph 37.a-i. The definitions for any terms defined in Paragraph 7 this Consent Decree and used in this Paragraph 37 shall be included and applied in the Title V Permit application.

- a) an identification of all LDAR Requirements applicable to Covered LDAR Equipment within each Process Unit and an explanation supporting the finding of applicability;
- b) an identification of applicable monitoring frequencies and procedures for each Covered Type and Service of Equipment, including, but not limited to, Method 21;
- c) procedures to ensure that non-tagged Covered LDAR Equipment can be readily distinguished from any other Covered LDAR Equipment or equipment that is not Covered LDAR Equipment;
- d) procedures for repairing and monitoring Covered LDAR Equipment that is identified as leaking and is not identified on any Difficult or Unsafe To Monitor List or Inaccessible Connectors and Inaccessible Agitators List or on any Delay of Repair List for such Covered Process Unit;
- e) procedures for monitoring Covered LDAR Equipment which is identified on any Difficult or Unsafe To Monitor List or Inaccessible Connectors and Inaccessible Agitators List for such Covered Process Unit, to the extent such monitoring is required pursuant to applicable LDAR Requirements;
- f) procedures for repairing each piece of Covered LDAR Equipment which is identified on any Delay of Repair List for such Covered Process Unit;
- g) procedures for accurate and complete reporting and record keeping in accordance with the applicable LDAR Requirements;

- h) an LDAR Equipment Inventory Program which includes:
 - i) identification of a supervisory level employee knowledgeable about each Covered Process Unit and responsible for ensuring that all LDAR Equipment Tracking Procedures, as specified in Paragraph 39.h) ii, below, are complied with;
 - ii) LDAR Equipment Tracking Procedures for each Process Unit, including:
 - 1. procedures for identifying each new piece of Covered LDAR Equipment subject to LDAR monitoring that is added to any Process Unit and reporting the addition of such equipment as required by the applicable LDAR Requirements;
 - 2. procedures for integrating new Covered LDAR Equipment subject to LDAR monitoring into the LDAR monitoring program, reporting program and recordkeeping program;
 - 3. procedures for ensuring that each Covered LDAR Equipment that is taken out of service is removed from the LDAR monitoring program, LDAR reporting program and recordkeeping program; and,
 - 4. procedures for ensuring that any monitoring data, including monitoring relating to each Covered LDAR Equipment that is taken out of service, are maintained in accordance with applicable LDAR Requirements.
 - i) a list of Covered LDAR Equipment, or reference to the physical and/or electronic location of such list.

38. DuPont shall submit the application for modification required by Paragraph 37, above, within sixty (60) Days of EPA's approval of the LDAR Manual required by Paragraph C of Attachment A hereto or simultaneous with the Title V permit renewal application for such Covered Process Unit, whichever is later. At the time it submits the application, DuPont shall provide a copy of the application to EPA.

VI. REPORTING REQUIREMENTS

A. Semi-Annual Consent Decree Progress Reports

39. On the dates set forth in Paragraph 40 of this Consent Decree, DuPont shall submit to EPA Progress Reports that contain the following information for each six-Month reporting period:

- a. a description of each requirement of this Consent Decree that was completed during the reporting period, including the date such requirement was completed;
- b. a schedule showing all tasks required by this Consent Decree that DuPont intends to complete during the next reporting period, including an identification and description of any difficulties in completing such tasks that DuPont anticipates will arise in completing such tasks. Such identification shall be in addition to, and not in lieu of, any notice required by Paragraph 58 of this Consent Decree;
- c. an identification and description of any non-compliance with the requirements of Section V of this Consent Decree (Compliance Requirements);
- d. an identification of any of the requirements of Section V of this Consent Decree (Compliance Requirements) that were not completed by the applicable deadline and a description of the problems encountered in complying with the identified requirement;
- e. any deficiencies identified in the Quarterly QA/QC ELP review required by Paragraphs 13, 14 and 15 of this Consent Decree;
- f. a description and status of all actions completed during the reporting period to remedy any deficiencies identified during any audit completed during the reporting period;

g. an identification of each valve for which DuPont could not comply with the replacement or repacking requirements of Subsection I.5 of Attachment B hereto during the reporting period;

h. the information required by Subsection J.4 of Attachment B hereto;
and

i. a description of any training of LDAR Personnel completed during the reporting period.

40. The progress reports required to be submitted pursuant to Paragraph 39, above, shall be submitted no later than September 30 and March 31 of each year after the Effective Date, until termination of this Consent Decree pursuant to Section XVII (Termination). The report due March 31 shall provide the required information for the six-Month period from September through February. The report due September 30 shall provide the required information for the six-Month period from March through August.

B. Annual ELP Audit Reports

41. No later than sixty (60) Days after each Annual ELP Audit Completion Date, as specified in Attachment B, Section II.A, DuPont shall submit a written Annual ELP Audit Report to EPA that includes the following:

a. the documentation of repair attempts and repairs of Covered ELP Equipment required to be maintained pursuant to Section I.G.4 (Repairs of Covered ELP Equipment) of Attachment B hereto;

b. a description of actions taken in accordance with Section I.I (Valve Replacement and Improvement Program) or I.K (Connector Replacement and Improvement Program) of Attachment B hereto, including a listing that contains:

i. an identification of each piece of Covered ELP Equipment that triggered a requirement in Subsection II.I (Valve Replacement and Improvement Program) or II.K (Connector Replacement and Improvement Program, of Attachment B hereto;

ii. the screening value and monitoring date for each piece of Covered ELP Equipment;

iii. the type of action taken (i.e., replacement, repacking, or improvement), including supporting documentation; and,

iv. the date the action was taken.

c. A schedule for any planned future replacements, repackings, improvements, or eliminations of any valve(s) or connector(s);

d. A summary of the results of the Annual ELP Implementation Audits required by Section II (Annual ELP Audit) of Attachment B, including a description of all deficiencies and actions taken, or scheduled to be completed, to correct such deficiencies;

e. A summary of results of the Comparative Monitoring required by Attachment B and a description of the corrective actions that DuPont has taken, or shall take, to address the causes of each Comparative Monitoring Leak ratio that is 3.0 or higher; and

f. A summary of all corrective actions completed to address any noncompliance identified during, or as a result of, any Annual ELP Audit and a schedule for all remaining corrective actions to remedy any deficiency identified during the Annual ELP Audit that are required to be completed within ninety (90) Days of the completion of such Audit. In the event that DuPont anticipates that it will be unable to complete any required corrective action within the 90 Days provided in this Subparagraph 41.f, DuPont shall submit to EPA for review and approval a Request for Extension of Time to Complete Annual ELP Audit Corrective Action required by and in accordance with the requirements of Section II.E of Attachment B hereto.

42. Each notice, report, or other submission made pursuant to the requirements of this Consent Decree, including but not limited to the requirements of Attachments A and B, shall be signed by the corporate official responsible for environmental management and compliance at the Facility and shall include the following certification:

I certify under penalty of law that I have examined and am familiar with the information in the enclosed documents(s), including all attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are, to the best of my knowledge and belief, true and complete. I am aware that there are significant penalties for knowingly submitting false statements and information, including the possibility of fines or imprisonment pursuant to Section 113(c)(3) of the Clean Air Act and 18 U.S.C. Sections 1001 and 1341.

This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

43. All notices, reports, or other submissions under this Consent Decree shall be submitted to EPA and the State in the manner designated in Section XIII of this Consent Decree (Notices).

44. The reporting requirements of this Consent Decree do not relieve DuPont of any reporting obligations required by the Clean Air Act or its implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement. The reporting requirements of this Section VI (Reporting Requirements) are in addition to any other reports, plans, or submissions required by other Sections of this Consent Decree.

45. Any information provided pursuant to this Consent Decree may be used by the United States and the State in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VII. STIPULATED PENALTIES

46. Late Payment of Civil Penalty to the United States. If DuPont fails to pay the civil penalty required to be paid to the United States under Section IV of this Decree (Civil Penalty) when due, DuPont shall pay a stipulated penalty to the United States of \$3,000 per Day for each Day that the payment is late.

47. Late Payment of Civil Penalty to the State. If DuPont fails to pay the civil penalty required to be paid to the State under Section IV of this Decree (Civil Penalty) when due, DuPont shall pay a stipulated penalty to the State of \$3,000 per Day for each Day that the payment is late.

48. DuPont shall be liable for stipulated penalties for violations of this Consent Decree as specified below, unless excused under Section VIII (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of

this Decree and within the specified time schedules established by or approved under this Decree.

49. The following stipulated penalties shall accrue for each violation of the requirements of this Consent Decree:

Violation	Stipulated Penalty								
Failure to develop and timely submit an LDAR Manual as required by Paragraph C of Attachment A or timely update the LDAR Manual as required by Paragraph G of Attachment A. This stipulated penalty shall not apply where DuPont has timely submitted or updated the LDAR Manual, as applicable, notwithstanding that the LDAR Manual or update is incomplete or deficient and/or subject to the stipulated penalty below for deficient or incomplete LDAR Manual or update.	<table> <tr> <th><u>Period of noncompliance</u></th><th><u>Penalty per Day</u></th></tr> <tr> <td>1 – 15 Days</td><td>\$300</td></tr> <tr> <td>16 - 30 Days</td><td>\$400</td></tr> <tr> <td>31 Days or more</td><td>\$500</td></tr> </table>	<u>Period of noncompliance</u>	<u>Penalty per Day</u>	1 – 15 Days	\$300	16 - 30 Days	\$400	31 Days or more	\$500
<u>Period of noncompliance</u>	<u>Penalty per Day</u>								
1 – 15 Days	\$300								
16 - 30 Days	\$400								
31 Days or more	\$500								
Deficient or incomplete LDAR Manual or update: Submittal of an LDAR Manual that does not meet the requirements of Paragraph C, Attachment A or failure to annually update any of the items listed in Paragraph C of Attachment A to show current information and procedures, as required by Paragraph G of Attachment A.	\$100 per missing or deficient item								
Failure to tag any Covered LDAR Equipment initially in accordance with the requirements of Paragraph B of Attachment A or Failure to comply with Paragraph G.3 of Attachment A, which requires DuPont annually to ensure that Covered LDAR Equipment is tagged, as necessary.	\$100 per each Covered ELP Equipment								
Failure to perform monitoring in accordance with Section I of Attachment B	\$100 per each Covered ELP Equipment per missed monitoring event; not to exceed \$25,000 per Month per Covered Process Unit								

Failure to comply with the requirements of Paragraph 12 of this Consent Decree	\$100 per each failure								
Failure to perform Quarterly QA/QC Reviews in accordance with the requirements of Paragraphs 13 through 15 this Consent Decree	\$5,000 per Review								
Failure to timely submit or revise any list required by Paragraph E of Attachment A	<table> <tr> <th><u>Period of noncompliance</u></th><th><u>Penalty per Day</u></th></tr> <tr> <td>1 – 15 Days</td><td>\$300</td></tr> <tr> <td>16 - 30 Days</td><td>\$400</td></tr> <tr> <td>31 Days or more</td><td>\$500</td></tr> </table>	<u>Period of noncompliance</u>	<u>Penalty per Day</u>	1 – 15 Days	\$300	16 - 30 Days	\$400	31 Days or more	\$500
<u>Period of noncompliance</u>	<u>Penalty per Day</u>								
1 – 15 Days	\$300								
16 - 30 Days	\$400								
31 Days or more	\$500								
Failure to ensure on an annual basis that any list required by Paragraph E of Attachment A is complete and accurate in accordance with the requirements of Paragraph E of Attachment A	\$100 per each item missing or inaccurate, not to exceed \$3,000 per list								
Failure to perform repairs or to perform, Repair Verification Monitoring as required by Section I of Attachment B	\$500 per each piece of Covered ELP Equipment for which required Repair Verification Monitoring was not performed, but not greater than a total of \$10,000 per Month for all such failures								
Improper placement of a piece of Covered ELP Equipment on the DOR list as per Section I of Attachment B (i.e., identifying any Covered ELP Equipment on the DOR list that does not meet the requisite criteria for Delay of Repair)	Penalty per piece of Covered ELP Equipment improperly placed on the DOR list per Day: Each Valve or Connector: \$300, not to exceed \$50,000 per year Each Pump or Agitator: \$1,200, not to exceed \$200,000 per year								
Failure to comply with any requirement of the Valve Replacement and Improvement Program required by Section I of Attachment B	\$100 per each valve per day for failure to install Certified Low-Emissions Valve or Certified Low-Emissions Valve Packing Material for newly installed valves, but not greater than \$10,000 per Month per Covered Process Unit. \$100 Per each valve per Day for each failure to replace or repack existing valves								

Failure to comply with any requirement of the Connector Replacement and Improvement Program pursuant to Section I of Attachment B	\$100 per each Connector per Day for failure to comply with the requirements for adding new connectors and/or replacing or improving existing connectors, but not greater than \$10,000 per Month per Covered Process Unit										
Failure to perform any LDAR Audit in accordance with Attachment A or Attachment B	\$5,000 per Audit, per Month										
Failure to develop a written LDAR training program or otherwise comply with Paragraphs 24-30 of this Consent Decree or failure to perform any task in accordance with such program	<p>Failure to develop a written LDAR training program:</p> <ul style="list-style-type: none"> • \$50 per missing element per Day <p>Failure to train any personnel in accordance with the requirements of Paragraphs 26, 27, or 29 of this Consent Decree:</p> <ul style="list-style-type: none"> • \$1,000 per person per Month <p>Failure to comply with any additional requirement set forth in Paragraphs 24 through 30 of this Consent Decree</p> <ul style="list-style-type: none"> • \$1,000 per requirement per Day <p>Failure to perform tasks on an annual basis in accordance with the written LDAR Training Program:</p> <ul style="list-style-type: none"> • \$50 per task per Day, not to exceed \$5,000 per year 										
Failure to timely submit any required audit report	<table> <tr> <th><u>Period of noncompliance</u></th><th><u>Penalty per Day Late</u></th></tr> <tr> <td>1 - 15 Days</td><td>\$300</td></tr> <tr> <td>16 - 30 Days</td><td>\$400</td></tr> <tr> <td>31 Days or more</td><td>\$500</td></tr> </table>	<u>Period of noncompliance</u>	<u>Penalty per Day Late</u>	1 - 15 Days	\$300	16 - 30 Days	\$400	31 Days or more	\$500		
<u>Period of noncompliance</u>	<u>Penalty per Day Late</u>										
1 - 15 Days	\$300										
16 - 30 Days	\$400										
31 Days or more	\$500										
Failure to timely complete any corrective action after the completion of a Quarterly QA/QC Review or an Annual ELP Audit pursuant to this Consent Decree or Section II of Attachment B.	<table> <tr> <th><u>Period of noncompliance</u></th><th><u>Penalty per Day Late</u></th></tr> <tr> <td>1 - 15 Days</td><td>\$500</td></tr> <tr> <td>16 - 30 Days</td><td>\$750</td></tr> <tr> <td>31 Days or more</td><td>\$1,000,</td></tr> <tr> <td colspan="2">but not to exceed \$150,000 per year</td></tr> </table>	<u>Period of noncompliance</u>	<u>Penalty per Day Late</u>	1 - 15 Days	\$500	16 - 30 Days	\$750	31 Days or more	\$1,000,	but not to exceed \$150,000 per year	
<u>Period of noncompliance</u>	<u>Penalty per Day Late</u>										
1 - 15 Days	\$500										
16 - 30 Days	\$750										
31 Days or more	\$1,000,										
but not to exceed \$150,000 per year											

50. Stipulated penalties under this Section VII shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated

penalties shall accrue simultaneously for separate violations of this Consent Decree.

51. DuPont shall pay any stipulated penalty due under this Consent Decree within thirty (30) Days of receiving the United States' written demand or a written demand from the United States in which the State joins. Stipulated penalties due pursuant to a demand by the United States shall be payable to the United States in accordance with the instructions in Paragraph 9 of this Consent Decree. Stipulated penalties due pursuant to joint demand of the United States and the State shall be paid one-half to the United States and one half to the State in accordance with the instructions in Paragraphs 9 and 10 of this Consent Decree.

52. The United States, or the State, may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

53. Stipulated penalties shall continue to accrue as provided in Paragraph 69 during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement pursuant to Paragraph 63 of this Consent Decree or by a decision of EPA pursuant to Paragraph 65 of this Consent Decree that is not appealed to the Court, DuPont shall pay accrued penalties determined to be owing, together with interest, to the United States within thirty (30) Days of the effective date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court pursuant to Paragraph 66 of this Consent Decree and the United States prevails in whole or in part, DuPont shall pay all accrued penalties determined by the Court to be owing, together with interest, within sixty (60) Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, DuPont shall pay all accrued penalties determined to be owing, together with interest, within fifteen (15) Days of receiving the final appellate court decision.

54. DuPont shall pay stipulated penalties in the manner set forth and with the confirmation notices required by Paragraph 9 of this Consent Decree, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

55. If DuPont fails to pay stipulated penalties according to the terms of this Consent Decree, DuPont shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for DuPont's failure to pay any stipulated penalties.

56. Subject to the provisions of Section XI of this Consent Decree (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for DuPont's violation of this Consent Decree or applicable law.

VIII. FORCE MAJEURE

57. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of DuPont, of any entity controlled by DuPont, or of DuPont's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite DuPont's best efforts to fulfill the obligation. The requirement that DuPont exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any

potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. "Force majeure" does not include DuPont's financial inability to perform any obligation under this Consent Decree.

58. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree DuPont shall notify the EPA and West Virginia designees listed in Section XIII (Notices), in writing promptly, but not later than fourteen (14) business days after the time DuPont knew or should have known by the exercise of due diligence that the event might cause a delay. In the written notice, DuPont shall specifically reference this Paragraph 58 and shall provide, to the extent such information is available at the time, an explanation and description in writing of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; DuPont's rationale for attributing such delay to a force majeure event; and a statement as to whether, in the opinion of DuPont, such event may cause or contribute to an endangerment to public health, welfare or the environment. The written notice required by this Paragraph 58 shall be effective upon its mailing by overnight mail or by first class U.S. Postal Service mail to EPA in the manner set forth in Section XIII (Notices). DuPont shall include with any notice required by this Paragraph 58 all available documentation supporting the claim that the delay was attributable to a force majeure event. Failure to comply with the notice requirements of this Paragraph 58 shall preclude DuPont from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure.

DuPont shall be deemed to know of any circumstance of which DuPont, any entity controlled by DuPont, or DuPont's contractors knew or should have known.

59. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify DuPont in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

60. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify DuPont in writing of its decision.

61. If DuPont elects to invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution), it shall do so no later than thirty (30) Days after receipt of EPA's notice. In any such proceeding, DuPont shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that DuPont complied with the requirements of Paragraphs 57 and 58, above. If DuPont carries this burden, the delay at issue shall be deemed not to be a violation by DuPont of the affected obligation of this Consent Decree identified to EPA and the Court.

IX. DISPUTE RESOLUTION

62. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree

63. Informal Dispute Resolution. The first stage of dispute resolution shall consist of informal negotiations. The dispute shall be considered to have arisen when DuPont sends EPA and the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed sixty (60) Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within forty-five (45) Days after the conclusion of the informal negotiation period, DuPont invokes formal dispute resolution procedures as set forth below.

64. Formal Dispute Resolution. DuPont shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting DuPont's position and any supporting documentation relied upon by DuPont.

65. The United States shall serve its Statement of Position within forty-five (45) Days of receipt of DuPont's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States'

Statement of Position shall be binding on DuPont, unless DuPont files a motion for judicial review of the dispute in accordance with the following Paragraph.

66. DuPont may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIII of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within sixty (60) Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of DuPont's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

67. The United States shall respond to DuPont's motion within the time period allowed by the Local Rules of this Court. DuPont may file a reply memorandum, to the extent permitted by the Local Rules.

68. In a formal dispute resolution proceeding under this Section, DuPont shall bear the burden of demonstrating that its position complies with this Consent Decree and the Clean Air Act and that it is entitled to relief under applicable principles of law. The United States reserves the right to argue that its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law, and DuPont reserves the right to argue to the contrary.

69. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of DuPont under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with

respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 53, above. If DuPont does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties).

X. INFORMATION COLLECTION AND RETENTION

70. Recordkeeping and Retention: DuPont shall retain, and shall require its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including any electronically stored data, information, or communications), in its or its contractors' or agents' possession or control or that come into its or its contractors' or agents' possession or control, and that relate in any manner to DuPont's performance of its obligations under this Consent Decree, including any attachment hereto, for at least two (2) years after termination of this Consent Decree. Upon request by EPA, DuPont shall provide, in electronic format if so requested, any or all LDAR monitoring data generated during the life of this Consent Decree, regardless of whether such data was generated for purposes of compliance with the terms of this Consent Decree or other state or federally enforceable regulations or permit requirements. The information retention requirements of this Paragraph 70 shall apply regardless of any contrary corporate or institutional policies or procedures.

71. The United States and the State and their representatives, including attorneys, contractors, and consultants, shall have the right of entry into the Facility at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;

b. verify any data or information submitted to the United States or the State in accordance with the terms of this Consent Decree;

c. obtain documentary evidence, including photographs and similar data, and electronically stored information; and

d. assess DuPont's compliance with this Consent Decree.

72. At any time during the information-retention period required by Paragraph 70, above, upon request by the United States or the State, DuPont shall provide copies of any documents, records, or other information required to be maintained under this Section.

73. Except for emissions data, including any LDAR monitoring data, including calibration data, data relating to any LDAR monitoring equipment or information relating to any database used to store LDAR monitoring data, DuPont may assert that information required to be provided under this Section is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any information that DuPont seeks to protect as CBI, DuPont shall follow the procedures set forth in 40 C.F.R. Part 2.

74. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or the State pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of DuPont to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

75. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Finding of Violation attached hereto as Attachment C and in the

Complaint filed in this action through the date of lodging of this Consent Decree. This Consent Decree also resolves the civil claims of the State for the violations alleged in the Complaint in Intervention filed in this action through the date of lodging of this Consent Decree.

76. The United States and the State reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 75. This Consent Decree shall not be construed to limit the rights of the United States or the State to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 75. The United States and the State further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, DuPont's Facility, whether related to the violations addressed in this Consent Decree or otherwise.

77. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, civil penalties, other appropriate relief relating to the Facility, DuPont shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 75 of this Consent Decree.

78. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. DuPont is responsible for achieving and maintaining

complete compliance with all applicable federal, State, and local laws, regulations, and permits; and DuPont's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that DuPont's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, 42 U.S.C. § § 7401 *et seq.*, or with any other provisions of federal, State, or local laws, regulations, or permits.

79. This Consent Decree does not limit or affect the rights of DuPont or of the United States or the State against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against DuPont, except as otherwise provided by law.

80. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XII. COSTS

81. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States and the State shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by DuPont.

XIII. NOTICES

82. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and sent to the street addresses and post office boxes listed below. Except as otherwise specifically

provided herein, submission of hard copies is required for compliance with this Consent Decree.

The email addresses listed below are provided to permit submission of courtesy copies only and electronic submission of notices shall not satisfy the requirements of this Consent Decree except as provided in Paragraph 58 of this Consent Decree.

To the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-2-1-09610

To EPA:

Office of Air Enforcement & Compliance (3AP20)
Air Protection Division
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

and to

Zelma Maldonado (3AP20)
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103
Telephone: 215-814-3448
Facsimile: 215-814-2905
Maldonado.Zelma@epa.gov

and to

Kathleen J. Root, Esq. (3RC10)
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103
Telephone 215-814-2684
Facsimile: 215-814-2603

To the State

Jesse D. Adkins
Assistant Director, Compliance and Enforcement Section
Division of Air Quality
West Virginia Department of Environmental Protection
601 57th Street, SE
Charleston, WV 25304
Jesse.D.Adkins@wv.gov

To DuPont:

William A. Boyle
SHE Manager
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and to

Bart E. Cassidy
Manko, Gold, Katcher & Fox, LLP
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Bala Cynwyd, PA 19004
bcassidy@mankogold.com
Telephone (484) 430-2306

83. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

84. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XIV. EFFECTIVE DATE

85. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XV. RETENTION OF JURISDICTION

86. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections IX (Dispute Resolution) and XVI (Modification), or effectuating or enforcing compliance with the terms of this Decree.

XVI. MODIFICATION

87. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

88. Any disputes concerning modification of this Decree shall be resolved pursuant to Section IX of this Decree (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 68 of this Consent Decree, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XVII. TERMINATION

89. After DuPont has submitted the third of the Annual ELP Audit Reports required by Paragraph 41 of this Consent Decree, DuPont may send the United States, with a copy to the State, a Request for Termination of this Consent Decree. In the Request for Termination, DuPont must demonstrate that it has maintained satisfactory compliance with this Consent Decree for the two year period immediately preceding the Request for Termination and has obtained the modifications to its Title V permits required by Paragraph 37, above. In no event may this Consent Decree be terminated if the civil penalty and/or any outstanding stipulated penalties have not been paid. The Request for Termination shall include all necessary supporting documentation.

90. Following receipt by the United States of DuPont's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether DuPont has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees, after consultation with the State, that the Decree may be terminated, the United States shall submit, for the Court's approval, a motion to terminate the Consent Decree.

91. If the United States does not agree, after consultation with the State, that the Decree may be terminated, DuPont may invoke Dispute Resolution under Section IX of this Decree (Dispute Resolution). In the event that DuPont invokes Dispute Resolution under Section IX of this Consent Decree, the Parties shall proceed directly to formal dispute resolution pursuant to Paragraphs 65-69. However, DuPont shall not invoke formal dispute resolution of any dispute regarding termination until at least 120 Days after service of its Request for Termination.

XVIII. PUBLIC PARTICIPATION

92. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. DuPont consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified DuPont in writing that the United States no longer supports entry of the Decree.

XIX. SIGNATORIES/SERVICE

93. Each undersigned representative of DuPont, and the State of West Virginia, and the Deputy Section Chief of the Environmental Enforcement Section, Environment and Natural Resources Division, Department of Justice, certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

94. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. DuPont agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XX. INTEGRATION

95. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supercedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than deliverables that are subsequently submitted and approved pursuant to this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXI. FINAL JUDGMENT

96. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States, DuPont, and the State.

XXII. ATTACHMENTS

97. The following Attachments are attached to and incorporated by reference as part of this Consent Decree:

Attachment A is “LDAR Applicability Audit and LDAR Manual”

Attachment B is “Enhanced LDAR Program (ELP) and ELP Review and Audit Requirements”

Attachment C is “Finding of Violation” EPA Docket No.CAA-III-12-003


Dated and entered this ___ day of _____, 2013.

UNITED STATES DISTRICT JUDGE
Southern District of West Virginia
Charleston Division

United States et al. v. E.I. DuPont de Nemours & Company, Consent Decree


FOR PLAINTIFF UNITED STATES OF AMERICA:

10/22/13
DATE



NATHANIEL DOUGLAS
Deputy Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

October 23, 2013
DATE

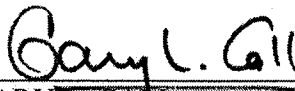


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United States et al. v. E.I. DuPont de Nemours & Company, Consent Decree

R. BOOTH GOODWIN II
UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF WEST VIRGINIA

10-23-13
DATE

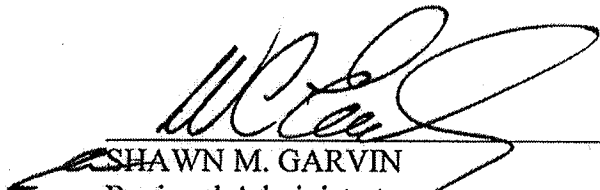


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United States et al. v. E.I. DuPont de Nemours & Company, Consent Decree

FOR EPA:

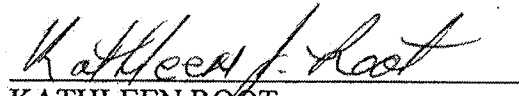
10/21/13
DATE


SHAWN M. GARVIN
Regional Administrator
U.S. Environmental Protection Agency, Region III
1650 Arch Street (3RA00)
Philadelphia, PA 19103-2029

10/21/2013
DATE


MARCIA E. MULKEY
Regional Counsel
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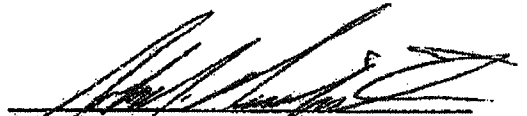
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DATE


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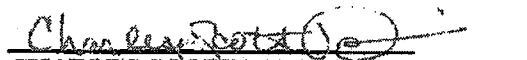
United States et al. v. E.I. DuPont de Nemours & Company, Consent Decree

FOR PLAINTIFF STATE OF WEST VIRGINIA:

10-24-2013
DATE


JOHN A. BENEDICT
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West Virginia Department of Environmental
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10-24-2013
DATE



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United States et al. v. E.I. DuPont de Nemours & Company, Consent Decree

FOR DUPONT:

09/27/2013

DATE



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Agent for Service of Process

United States et al. v. E.I. DuPont de Nemours & Company, Consent Decree

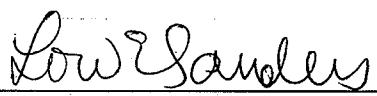
FOR DUPONT:

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